

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL INSURANCE COMPANY,

Plaintiff,

- against -

EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC., EXPEDITORS  
INTERNATIONAL OCEAN, EXPEDITORS  
INTERNATIONAL FRANCE SAS,

Defendants

ECF CASE

07 Civ 3166 (PKC)

**ANSWER OF FEDEX  
TRADE NETWORKS  
TRANSPORT &  
BROKERAGE, INC. TO  
THIRD-PARTY  
COMPLAINT**

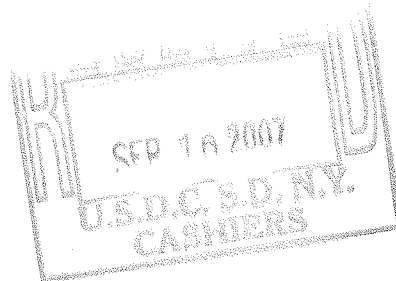
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EXPEDITORS INTERNATIONAL OF  
WASHINGTON, INC.; EXPEDITORS  
INTERNATIONAL OCEAN, EXPEDITORS  
INTERNATIONAL FRANCE SAS,

Third-Party Plaintiffs,

- against -

HYUNDAI MERCHANT MARINE, LTD,  
BURLINGTON NORTHERN SANTA FE  
RAILROAD, AIR FRANCE and FEDEX TRADE  
NETWORKS TRANSPORT & BROKERAGE,  
INC.,

Third-Party Defendants. :  
-----X



Third-party defendant FEDEX TRADE NETWORKS TRANSPORT &  
BROKERAGE, INC. (hereinafter "FEDEX"), by and through its attorneys, Clyde & Co  
US LLP answers the Third-Party Complaint as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth  
of the allegations in paragraphs 1, 3, 4 and 5 of the Third-Party Complaint, and leaves all  
questions of law for the Court.

2. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Third-Party Complaint, except admits that FEDEX was and still is a corporation duly organized and existing under the laws of one of the United States of America with an office located at 1 Cross Island Plaza, Suite 308, Rosedale, NY 11422, and provides, among other services, customs brokerage and air cargo distribution services, and states that it leaves all questions of law for the Court.

3. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 7, 8, 9, 10 and 11 of the Third-Party Complaint.

4. Denies the allegations in paragraph 12 of the Third-Party Complaint.

5. Denies knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 13 of the Third-Party Complaint.

6. Denies the allegations in paragraph 14 of the Third-Party Complaint.

**AS AND FOR A FIRST  
AFFIRMATIVE DEFENSE**

7. In the event that plaintiff has or had no title or interest in the goods and/or property that are the subject matter of the action, the plaintiff is not a real party in interest and neither plaintiff nor third-party plaintiff is entitled to maintain this suit.

**AS AND FOR A SECOND  
AFFIRMATIVE DEFENSE**

8. The damages allegedly sustained by plaintiff and/or third-party plaintiffs were caused or contributed to by the negligence or culpable conduct of plaintiff and/or third-party plaintiffs and, therefore, FEDEX is not liable for any damages allegedly sustained by plaintiff or third-party plaintiffs or, alternatively, its liability to plaintiff

and/or third-party plaintiffs is partial only and should be reduced in accordance with applicable law.

**AS AND FOR A THIRD  
AFFIRMATIVE DEFENSE**

9. Plaintiff and/or third-party plaintiffs' alleged damages resulted from the acts or omissions of parties other than FEDEX and for whom FEDEX is not responsible and, therefore, FEDEX is not liable to plaintiff and/or third-party plaintiffs or, alternatively, the liability of FEDEX to plaintiff and/or third-party plaintiffs is partial only and should be reduced in accordance with applicable law.

**AS AND FOR A FOURTH  
AFFIRMATIVE DEFENSE**

10. The damages allegedly sustained by plaintiff and/or third-party plaintiffs were not proximately caused by any negligence or culpable conduct on the part of FEDEX.

**AS AND FOR A FIFTH  
AFFIRMATIVE DEFENSE**

11. The damages alleged in the Complaint and Third-Party Complaint were brought about by an intervening and superseding cause, and were not caused by FEDEX or by any third-party for whom FEDEX is responsible.

**AS AND FOR A SIXTH  
AFFIRMATIVE DEFENSE**

12. Plaintiff failed to mitigate its damages, if any, and FEDEX, therefore, is not liable for any damages to plaintiff and/or third-party plaintiffs.

**AS AND FOR A SEVENTH  
AFFIRMATIVE DEFENSE**

13. The liability of FEDEX, if any, is limited in accordance with the applicable contracts, bill of lading, tariffs and/or applicable regulations, statutes or treaties.

**AS AND FOR A EIGHTH  
AFFIRMATIVE DEFENSE**

14. The applicable contracts, bill of lading, tariffs and/or applicable regulations, statutes and treaties do not contemplate responsibility for special or consequential damages. To the extent that plaintiff or third-party plaintiffs seek recovery for special or consequential damages, FEDEX is not responsible.

**AS AND FOR A NINTH  
AFFIRMATIVE DEFENSE**

15. The alleged damage did not occur while the property or goods were in the custody or control of FEDEX.

**AS AND FOR A TENTH  
AFFIRMATIVE DEFENSE**

16. The Complaint fails to state a cause of action upon which relief can be granted.

**WHEREFORE**, third-party defendant FEDEX demands judgment dismissing the Third-Party Complaint in its entirety or, alternatively, judgment limiting its liability pursuant to the foregoing, together with costs and disbursements.

Dated: New York, New York  
September 6, 2007

Yours, etc.,

CLYDE & CO US LLP

By: 

Christopher Carlsen (CC 9628)

Attorneys for Defendant  
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TO: BADIAK & WILL, LLP  
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Ref No. 07-T-002-RB

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AIR FRANCE  
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New York, New York 100196

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

Melissa Vorozilchak, being duly sworn, deposes and says that deponent is not a party of this action, is over 18 years of age and resides in New York, New York. That on September 6, 2007 deponent served the within **ANSWER OF FEDEX TRADE NETWORKS TRANSPORT & BROKERAGE, INC. TO THIRD-PARTY COMPLAINT** upon:

BADIAK & WILL, LLP  
Attorneys for Defendants/Third-Party  
Defendants  
EXPEDITORS  
106 Third Street  
Mineola, New York 11501-4404  
(516) 877-2225

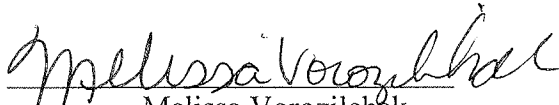
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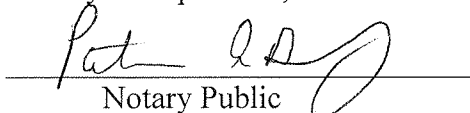
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AIR FRANCE  
125 W 55th Street  
New York, New York 10019

The address(es) designated by said attorney(s) for that purpose by depositing a true copy thereof enclosed in a post-paid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Post Office within the State of New York.

  
Melissa Vorozilchak

Sworn to before me this  
6th day of September, 2007

  
Notary Public

**PATRICIA A. DONNELLY**  
Notary Public, State of New York  
No. 01DO5087441  
Qualified in New York County  
Commission Expires Nov. 30, 2009